

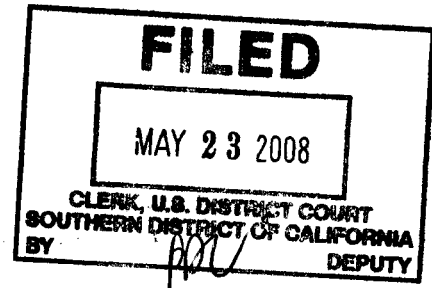
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5 **NUNC PRO TUNC**

6 MAY 21 2008



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8  
9 **United States District Court**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
11

12 LANTZ ARNELL, MD

**Case # '08 - CV- 00441**

**NOTICE of opposition to**

**Judge McAdam's Motion**

14  
15 **vs.**

**To Dismiss**

**Oral argument requested.**

16  
17 **Judge W. McAdam**

18 **Respondent**  
19

20 **Date: June 16, 2008**

21 **Time: 11 a.m.**

22 **Room: 9**

23 **Judge Honorable William Burns**  
24

25 To Ms. Cheryl L Brierton, attorney for Judge William McAdam (herein after  
26 (defendant): PLEASE TAKE NOTICE that on June 16, 2008 at 11 a.m., in  
27 courtroom assigned by the court clerk on the 4<sup>th</sup> floor of the United States District  
28 Court for the Southern District of California, located at 940 Front Street, San Diego

1 California before the Honorable Judge William Burns, plaintiff will oppose  
2 defendant's Motion to Dismiss plaintiff's complaint by oral presentation and the  
3 filing of these and other papers on the grounds that the motion is fatally flawed.

4 1. Sovereign immunity and Rooker Feldman abstention do not apply when  
5 extrinsic fraud is alleged in a racketeering case.

6 a. "Extrinsic fraud on a Court is, by definition, not an error by that court.  
7 It is, rather, a wrongful act committed by the party or parties who engaged in the  
8 fraud. Rooker Feldman does not bar subject matter jurisdiction when a federal  
9 plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set  
10 aside a state court judgement obtained by that fraud. [*KOUGASIAN v. TMSL, Inc.*,  
11 (9<sup>TH</sup> Cir. 2004) 359 F3d 1136,1141] No judicial immunity if judge is a party to the  
12 extrinsic fraud.

13 b. Sovereign immunity is conferred by the 9<sup>TH</sup>, 10<sup>TH</sup>, and 11<sup>th</sup> Amendments  
14 to the United States Constitution. However, article 1, section 8, paragraph 3 gives  
15 the federal government the exclusive authority to regulate interstate commerce.  
16 "Congress shall have the power...to regulate Commerce...among the several states."  
17 "Allegations... concerning bribery, extortion and macing by county and political  
18 party officials supported civil RICO claim." "...criminal proceedings were  
19 instituted against plaintiffs through defendant officials offers to benefit prosecutors'  
20 political careers..." [*Rose v. Bartle*, C.A. 3 (Pa.) 1989, 871 F. 2d 331]

21 c. "Plaintiff has standing to sue under RICO if complaint alleges injury to  
22 business or property proximately caused by overt act in furtherance of conspiracy to  
23 violate RICO, even though the overt act is not a predicate act *required* in RICO  
24 pattern. [*Schiffels v. Kemper Financial Services, Inc.*, C.A. 7 (Ill.) 1992, 978 F. 2d  
25 344].

26 d. "Suits against state officers in their individual capacity for damages for  
27 violation of federal law are not deemed actions against the state and are not barred  
28 by (sovereign immunity). [*Scheuer v. Rhodes* (1974) 416 US 232, 237, 94 s. Ct.

1 1683, 1687]. “(Sovereign immunity) is no bar to suit against individual state  
 2 officers in federal court.” **The court has jurisdiction over the person.** [*Hafer v.*  
 3 *Melo (1991)* 502 US 21, 31, 112 S. Ct. 358, 365] “Indemnification from the state  
 4 by itself is not enough to treat actions against state officials as actions against the  
 5 state.” [*Ashker v. California Dept. Of Corrections (9<sup>th</sup> Cir.1997)* 112 F. 3d 392,  
 6 395.]

7 e. Section 5 of the 14<sup>th</sup> Amendment provides that “Congress shall have the  
 8 power to enforce, by appropriate legislation, the provisions of this article. This  
 9 provision abrogates the state’s immunity from private suits in federal court to  
 10 enforce equal protection and due process. [*Fitzpatrick v. Bitzer (1976)* 427 US 455,  
 11 456, 96 S. Ct. 2666, 2671]. Extrinsic fraud denies plaintiff access to the courts and  
 12 Section 5 of the 14<sup>th</sup> Amendment is intended to supercede Sovereign immunity with  
 13 regards to due process and equal protection.

14 Even if the commerce clause is not enough to support RICO action, the  
 15 legislative intent is found in the **Congressional Statement of Findings and**  
 16 **Purpose:**

17 “Section 1. Congress finds that organized crime in the United States is  
 18 **a highly** sophisticated ...widespread activity that drains billions of  
 19 dollars from the American economy by unlawful conduct and the  
 20 illegal use of force, fraud and corruption: (3) this money and power are  
 21 increasingly used to...subvert and corrupt our democratic processes.  
 22 (5) Organized crime continues to grow because remedies available to  
 23 the government are unnecessarily limited in scope and impact. It is the  
 24 purpose of this act to seek the eradication of organized crime in the  
 25 United States...”

26 Rico Statute intends to name state officials in lawsuits “to bear the unlawful  
 27 activities of those engaged in organized crime” **and** to use new tools including civil  
 28 suits brought by victims **against state officials in district courts** when there is

1 even circumstantial evidence that those officials have conspired to interfere with  
2 interstate commerce violating federal laws.

3 2. Page 2, line 8 refers to abusive pleadings but there is no reference to any  
4 pleading and Rule 11 bars unsubstantiated assertions of fact in motions. Heck V.  
5 Humphrey, a section 1983 case, doesn't prohibit this case.

6 3. Page 2, line 12, motion refers to "judge shopping." Again, the statement  
7 is unsubstantiated, the accusation is **False** and this is another violation of Rule 11.

8 4. The memorandum of points and authorities page 1 line 8 refers to the  
9 pleadings in the complaint as scurrilous. This is **False**. Scurrilous means abusive in  
10 a coarse or obscene manner, or low jocular derisive humor. (Webster's Unabridged  
11 Dictionary 2<sup>nd</sup> Ed. 2001). The pleadings contain lists of crimes perpetrated by the  
12 Continuing Criminal Enterprise (CCE). The language is taken directly from  
13 federal statutes. **FALSE** statements are in violation of Rule 11.

14 The same paragraph alleges that the current suit is a reaction to a loss in state  
15 court. This is **false**. The decision in state court is on appeal in state court. The  
16 pleadings make it clear that there is evidence of defendant's on going criminal  
17 activities outside of the courtroom, that other people have been harmed, and that the  
18 CCE's subversion of democratic processes allows it to infiltrate the state courts.

19 Page 1, line 18 "The writ appears to be premised on misconduct by plaintiff's  
20 attorneys..." But the next sentence quotes the writ "...Plaintiff sought dismissal of a  
21 misdemeanor charge based on false allegations of several conspirators..."

22 Defendant knows the truth but feigns confusion in order to **misstate the facts**.

23 This violates Rule 11. Also, line 15 states that the original complaint was 177  
24 pages. The complaint was 18 pages including points and authorities. There were  
25 150 pages of evidence against the defendant submitted as exhibits. The defendant  
26 refers to an altercation. Evidence reveals that there was no altercation. (Exhibit 2).  
27 Most of the allegations involving the defendant in the current case refer to events  
28 transpiring after the first case was filed when other members of the CCE moved to

1 protect him. The pleadings refer to investigations of organized crime going back 40  
2 years. The first and second cases are different. The current case is a concise RICO  
3 action but because wire fraud and computer hacking transcend national boundaries,  
4 USC 18 § 2332b is applicable. Attempting to impugn the integrity of the current  
5 case by re-litigating the first case is artifice.

6 The pleadings clearly state a claim on which relief can be granted. There is  
7 no judicial immunity in extrinsic fraud when the judge is a party to the fraud, and  
8 the pleadings are not abusive. "In determining motion to dismiss for failure to state  
9 claim upon which relief can be granted, court takes as true all factual allegations  
10 made in complaint, and construes all reasonable inferences in plaintiff's favor."

11 [*Industrial Specialty Chemicals Inc. v. Cummins Engine Co., Inc.* N.D. Ill. 1995,  
12 902 F. Supp. 805.]

### 13 CONCLUSION

14 Defendant knows there is substantial evidence linking him to organized crime.  
15 He will do what ever it takes to keep that evidence away from a jury. The motion is  
16 fatally flawed for the following reasons:

17 1. It is filled with false, unsubstantiated statements. Misrepresentations of  
18 the previous case are meant to confuse readers.

19 2. The Federal Court has jurisdiction over individual state officials if they  
20 violate federal law harming businesses involved in interstate commerce. The RICO  
21 statutes give the district court jurisdiction over the subject matter and the person.

22 3. The current case is a separate entity involving different events and people  
23 in a different period of time. Those events and the relationship with those people  
24 occurred after the earlier case was filed. Motion to dismiss this case must confront  
25 law and merit of this case. And it does not.

26 4. USC 2332b is not mentioned.

27 The RICO statutes were designed to identify corrupt officials. The crimes they  
28 commit are shocking but listing those offenses ought not be offensive to the court.

1 An innocent judge would not resort to false statements and artifice. Innocent judges  
2 don't file documents filled with false assertions and irrelevant citations. They don't  
3 file notices that purport to inform the court of something it already knows, use that  
4 document to name the judge they want and then falsely accuse the plaintiff of "judge  
5 shopping". Innocent judges don't waste the court's time re-arguing a dismissed case  
6 instead of confronting the issues of the current case. An innocent judge does not  
7 engage in questionable legal tactics or consistently violate Rule 11.

8 Plaintiff offers Defendant's Notice of Relevant Case, Plaintiff's response to  
9 that document, letter from defendant's attorney refusing to meet and confer, the  
10 Motion to Dismiss and plaintiff's objection to this motion as evidence to make a  
11 prima fascia case that plaintiff will prevail at trial. Respectfully, Defendant's  
12 Motion to dismiss should be denied.

13 Respectfully submitted,

14  
15  
16 5/16/08

  
\_\_\_\_\_  
Lantz Arnell, MD

## PROOF OF SERVICE—CIVIL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Lantz Arnell</b> 1516 Glorietta Blvd Coronado, Ca 92118 TELEPHONE NO.: 619-435-4064 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		POS-040  FOR COURT USE ONLY     CASE NUMBER: 08-CV-00441  JUDGE: <b>BURNS</b> DEPT.: <b>9</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>San Diego</b> STREET ADDRESS: <b>220 W. Broadway</b> MAILING ADDRESS: <b>San Diego, Ca. 92101</b> CITY AND ZIP CODE: BRANCH NAME: <b>Central Court House</b>		
PETITIONER/PLAINTIFF: <b>Lantz Arnell</b> RESPONDENT/DEFENDANT: <b>Judge William McAdam</b>		
<div style="text-align: center;"><b>PROOF OF SERVICE—CIVIL</b></div> Check method of service (only one): <input checked="" type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Facsimile <input type="checkbox"/> By E-Mail/Electronic Transmission		

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. At the time of service I was over 18 years of age and not a party to this action.

2. My address is (specify one):

a. ☐ Business:

b. ☒ Residence: **416 B. Avenue**  
**Coronado ca 92118**

3. On (date): **5/20/08**

I served the following documents (specify):

Notice of Opposition To DEFENDANT'S MOTION TO DISMISS.

☐ The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).

4. I served the documents on the persons below, as follows:

a. Name of person served:

b. Address of person served:

**220 W. Broadway**  
**San Diego, Ca. 92101 --Central Court House**

c. Fax number or e-mail address of person served, if service was by fax or e-mail:

d. Time of service, if personal service was used:

☐ The names, addresses, and other applicable information about the persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

5. The documents were served by the following means (specify):

a. ☒ By personal service. I personally delivered the documents to the persons at the addresses listed in item 4.  
 (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

Form Approved for Optional Use  
 Judicial Council of California  
 POS-040 (New January 1, 2005)

**PROOF OF SERVICE—CIVIL**  
 (Proof of Service)

Code of Civ. Proc., §§ 1011,  
 1013, 1013a, 2015.6  
 www.courtinfo.ca.gov

American LegalNet, Inc.  
 www.USCourtForms.com

DATE  
**May/20/08**

SIGNED

*[Signature]*